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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,118	06/20/2003	William W. Cimino	40206.19US01	9143
23552	7590	01/30/2007	EXAMINER	
MERCHANT & GOULD PC			WILLIAMS, CATHERINE SERKE	
P.O. BOX 2903			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402-0903			3763	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/600,118	CIMINO, WILLIAM W.
	<b>Examiner</b>	<b>Art Unit</b>
	Catherine S. Williams	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 September 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/26/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,6-7,9-13,15-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeldon et al (USPN 4,670,007) in view of Hadzic et al (USPN 5,910,135). Wheeldon discloses a strain gauge sensor (2), a container of sterile fluid (3), a peristaltic pump (7), a sterile tubing set (4), a processor (30) and a display (10). See figure 1 and 3:49-56; 4:22,35-39,63-5:11; 5:18-33; and 5:37,46-47,63-64. The device is capable of being used during any type of surgical procedure that would require a rapid administration of fluids including a cosmetic procedure such as lipoplasty. Regarding the pump, the pump has an adjustable speed control based on the weight of the fluid container.

Wheeldon does not disclose a method for accurately delivering sterile fluids for use in a cosmetic surgery such as lipoplasty or breast implantation that includes a pump that delivers or is capable of delivering fluid within the range of 30 ml/min to 1000 ml/min.

However, Hadzic discloses such a flow rate for intravenous infusion if a high flow rate is needed due to intraoperative bleeding, etc. See 7:45+.

At the time of the invention, it would have been obvious by one skilled in the art to enable the pump of Wheeldon to be adjusted to have a flow rate of 75ml/min. The motivation

for the teaching is provided by Hadzic in that a high flow rate may be needed to treat intraoperative bleeding. The incorporation would have been done in order to enhance the performance of the device during a surgical procedure.

Claims 5,8,14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeldon in view of Hadzic. Wheeldon in view of Hadzic meets the claim limitations as described above for claims 1 and 10. Wheeldon in view of Hadzic does not teach the tubing set being made of polyvinyl chloride.

However, at the time of the invention, it would have been obvious by one skilled in the art to make the tubing set from polyvinyl chloride. Applicant has not disclosed that PVC solves a problem, is used for a particular purpose or provides an advantage. Furthermore, PVC is well known in the art of fluid delivery for medical purposes and would have been chosen for its excellent ability to withstand sterilization before use.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Catherine S. Williams*

Catherine S. Williams

January 23, 2007

CATHERINE S. WILLIAMS  
PRIMARY EXAMINER